Subpart 25.5 - Evaluating Foreign Offers-Supply Contracts

Parent topic: Part 25 - Foreign Acquisition

25.501 General.

The *contracting officer*-

(a) *Must* apply the evaluation procedures of this subpart to each *line item* of an *offer* unless either the *offer* or the *solicitation* specifies evaluation on a group basis (see 25.503);

(b) *May* rely on the *offeror*'s certification of *end product* origin when evaluating a *foreign offer*;

(c) *Must* identify and reject *offers* of *end products* that are prohibited in accordance with subpart 25.7; and

(d) *Must* not use the Buy American statute evaluation factors prescribed in this subpart to provide a preference for one *foreign offer* over another *foreign offer*.

25.502 Application.

(a) Unless otherwise specified in agency regulations, perform the following steps in the order presented:

(1) Eliminate all *offers* or *offerors* that are unacceptable for reasons other than price; *e.g.,* nonresponsive, debarred or suspended, or a prohibited source (see subpart 25.7).

(2) Rank the remaining *offers* by price.

(3) If the *solicitation* specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in this section and use the evaluated cost or price in determining the *offer* that represents the *best value* to the Government.

(b) For *acquisitions* covered by the WTO GPA (see subpart 25.4)-

(1) Consider only *offers* of U.S.-made or *designated country end products*, unless no *offers* of such *end products* were received;

(2) If the agency gives the same consideration given *eligible offers* to *offers* of *U.S.-made end products* that are not *domestic end products*, award on the low *offer*. Otherwise, evaluate in accordance with agency procedures; and

(3) If there were no *offers* of U.S.-made or *designated country end products*, make a nonavailability determination (see 25.103(b)(2)) and award on the low *offer* (see 25.403(c)).

(c) For *acquisitions* not covered by the WTO GPA, but subject to the Buy American statute (an FTA or the Israeli Trade Act also *may* apply), the following applies:

(1) If the low *offer* is a *domestic offer* or an *eligible offer* under an FTA or the Israeli Trade Act, award on that *offer*.

(2) If the low *offer* is a *noneligible offer* and there were no *domestic offers* (see 25.103(b)(3)), award on the low *offer*.

(3) If the low *offer* is a *noneligible offer* and there is an *eligible offer* that is lower than the lowest *domestic offer*, award on the low *offer*. The Buy American statute provides an evaluation preference only for *domestic offers*.

(4) Otherwise, apply the appropriate evaluation factor provided in 25.105 to the low *offer*.

(i) If the evaluated price of the low *offer* remains less than the lowest *domestic offer*, award on the low *offer*.

(ii) If the price of the lowest *domestic offer* is less than the evaluated price of the low *offer*, award on the lowest *domestic offer*.

(d) *Ties.*

(1) If application of an evaluation factor results in a tie between a *domestic offer* and a *foreign offer*, award on the *domestic offer*.

(2) If no evaluation preference was applied (*i.e., offers* afforded nondiscriminatory treatment under the Buy American statute), resolve ties between domestic and *foreign offers* by a witnessed drawing of lots by an impartial individual.

(3) Resolve ties between *foreign offers* from *small business concerns* (under the Buy American statute, a small business offering a manufactured article that does not meet the definition of "*domestic end product*" is a *foreign offer*) or *foreign offers* from a *small business concern* and a large business concern in accordance with 14.408-6(a).

25.503 Group offers.

(a) If the *solicitation* or an *offer* specifies that award can be made only on a group of *line items* or on all *line items* contained in the *solicitation* or *offer*, reject the *offer*-

(1) If any part of the award would consist of prohibited *end products* (see subpart 25.7); or

(2) If the *acquisition* is covered by the WTO GPA and any part of the *offer* consists of items restricted in accordance with 25.403(c).

(b) If an *offer* restricts award to a group of *line items* or to all *line items* contained in the *offer*, determine for each *line item* whether to apply an evaluation factor (see 25.504-4, Example 1).

(1) First, evaluate *offers* that do not specify an award restriction on a *line item* basis in accordance with 25.502, determining a tentative award pattern by selecting for each *line item* the *offer* with the lowest evaluated price.

(2) Evaluate an *offer* that specifies an award restriction against the offered prices of the

tentative award pattern, applying the appropriate evaluation factor on a *line item* basis.

(3) Compute the total evaluated price for the tentative award pattern and the *offer* that specified an award restriction.

(4) Unless the total evaluated price of the *offer* that specified an award restriction is less than the total evaluated price of the tentative award pattern, award based on the tentative award pattern.

(c) If the *solicitation* specifies that award will be made only on a group of *line items* or all *line items* contained in the *solicitation*, determine the category of *end products* on the basis of each *line item*, but determine whether to apply an evaluation factor on the basis of the group of items (see 25.504-4, Example 2).

(1) If the proposed price of *domestic end products* exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a *domestic offer*. Evaluate all other groups as *foreign offers*.

(2) For *foreign offers*, if the proposed price of *domestic end products* and *eligible products* exceeds 50 percent of the total proposed price of the group, evaluate the entire group as an *eligible offer*.

(3) Apply the evaluation factor to the entire group in accordance with 25.502.

25.504 Evaluation examples.

The following examples illustrate the application of the evaluation procedures in 25.502 and 25.503. The examples assume that the *contracting officer* has eliminated all *offers* that are unacceptable for reasons other than price or a trade agreement (see 25.502(a)(1)). The evaluation factor *may* change as provided in agency regulations.

25.504-1 Buy American statute.

(a)

(1) *Example 1*.

Offer A	$16,000	*Domestic end product*, small business
Offer B	$15,700	*Domestic end product*, small business
Offer C	$10,000	*U.S.-made end product* (not domestic), small business

(2) *Analysis:* This *acquisition* is for *end products* for use in the *United States* and is set aside for *small business concerns*. The Buy American statute applies. Since the *acquisition* value is less than $25,000 and the *acquisition* is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). *Offer* C is evaluated as a *foreign end product* because it is the product of a small

business, but is not a *domestic end product* (see 25.502(c)(4)). Since *Offer* B is a *domestic offer*, apply the 30 percent factor to *Offer* C (see 25.105(b)(2)). The resulting evaluated price of $13,000 remains lower than *Offer* B. The cost of *Offer* B is therefore unreasonable (see 25.105(c)). Award on *Offer* C at $10,000 (see 25.502(c)(4)(i)).

(b)

(1) *Example 2*.

Offer A	$11,000	*Domestic end product*, small business
Offer B	$10,700	*Domestic end product*, small business
Offer C	$10,200	*U.S.-made end product* (not domestic), small business

(2) *Analysis*: This *acquisition* is for *end products* for use in the *United States* and is set aside for *small business concerns*. The Buy American statute applies. Perform the steps in 25.502(a). *Offer* C is evaluated as a *foreign end product* because it is the product of a small business but is not a *domestic end product* (see 25.502(c)(4)). After applying the 30 percent factor, the evaluated price of *Offer* C is $13,260. Award on *Offer* B at $10,700 (see 25.502(c)(4)(ii)).

25.504-2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.

Example 1.

Offer A	$304,000	*U.S.-made end product* (not domestic)
Offer B	$303,000	*U.S.-made end product* (domestic), small business
Offer C	$300,000	*Eligible product*
Offer D	$295,000	*Noneligible product* (not U.S.-made)

Analysis: Eliminate *Offer* D because the *acquisition* is covered by the WTO GPA and there is an *offer* of a U.S.-made or an *eligible product* (see 25.502(b)(1)). If the agency gives the same consideration given *eligible offers* to *offers* of *U.S.-made end products* that are not *domestic offers*, it is unnecessary to determine if *U.S.-made end products* are domestic (large or small business). No further analysis is necessary. Award on the low remaining *offer*, *Offer* C (see 25.502(b)(2)).

25.504-3 FTA/Israeli Trade Act.

(a) *Example 1*.

Offer A	$105,000	*Domestic end product*, small business
Offer B	$100,000	*Eligible product*

Analysis: Since the low *offer* is an *eligible offer*, award on the low *offer* (see 25.502(c)(1)).

(b) *Example 2*.

Offer A	$105,000	*Eligible product*
Offer B	$103,000	*Noneligible product*

Analysis: Since the *acquisition* is not covered by the WTO GPA, the *contracting officer* can consider the *noneligible offer*. Since no *domestic offer* was received, make a nonavailability determination and award on *Offer* B (see 25.502(c)(2)).

(c) *Example 3*.

Offer A	$105,000	*Domestic end product*, large business
Offer B	$103,000	*Eligible product*
Offer C	$100,000	*Noneligible product*

Analysis: Since the *acquisition* is not covered by the WTO GPA, the *contracting officer* can consider the *noneligible offer*. Because the *eligible offer* (*Offer* B) is lower than the *domestic offer* (*Offer* A), no evaluation factor applies to the low *offer* (*Offer* C). Award on the low *offer* (see 25.502(c)(3)).

25.504-4 Group award basis.

(a) *Example 1*.

OFFERS

Item	**A**			**B**			**C**		
1	DO	=	$55,000	EL	=	$56,000	NEL	=	$50,000
2	NEL	=	$13,000	EL	=	$10,000	EL	=	$13,000

OFFERS

Item	A			B			C		
3	NEL	=	$11,500	DO	=	$12,000	DO	=	$10,000
4	NEL	=	$24,000	EL	=	$28,000	NEL	=	$22,000
5	DO	=	$18,000	NEL	=	$10,000	DO	=	$14,000
	$121,500			$116,000			$109,000		

Key:

DO	=	*Domestic end product*
EL	=	*Eligible product*
NEL	=	*Noneligible product*

Problem: *Offeror* C specifies all-or-none award. Assume all *offerors* are large businesses. The *acquisition* is not covered by the WTO GPA.

Analysis: (see 25.503)

STEP 1: Evaluate *Offers* A & B before considering *Offer* C and determine which *offer* has the lowest evaluated cost for each *line item* (the tentative award pattern):

Item 1: Low *offer* A is domestic; select A.

Item 2: Low *offer* B is eligible; do not apply factor; select B.

Item 3: Low *offer* A is noneligible and *Offer* B is a *domestic offer*. Apply a 20 percent factor to *Offer* A. The evaluated price of *Offer* A is higher than *Offer* B; select B.

Item 4: Low *offer* A is noneligible. Since neither *offer* is a *domestic offer*, no evaluation factor applies; select A.

Item 5: Low *offer* B is noneligible; apply a 20 percent factor to *Offer* B. *Offer* A is still higher than *Offer* B; select B.

STEP 2: Evaluate *Offer* C against the tentative award pattern for *Offers* A and B:

OFFERS

Item	**Low *Offer***	**Tentative Award Pattern from A and B**			**C**		
1	A	DO	=	$ 55,000	*NEL	=	$60,000
2	B	EL	=	$10,000	EL	=	$13,000
3	B	DO	=	$12,000	DO	=	$10,000
4	A	NEL	=	$24,000	NEL	=	$22,000
5	B	*NEL	=	<u>$12,000</u>	DO	=	<u>$14,000</u>
TOTAL		$113,000			$119,000		

**Offer* + 20 percent.

On a *line item* basis, apply a factor to any *noneligible offer* if the other *offer* for that *line item* is domestic.

For Item 1, apply a factor to *Offer* C because *Offer* A is domestic and the *acquisition* was not covered by the WTO GPA. The evaluated price of *Offer* C, Item 1, becomes $60,000 ($50,000 plus 20 percent). Apply a factor to *Offer* B, Item 5, because it is a *noneligible product* and *Offer* C is domestic. The evaluated price of *Offer* B is $12,000 ($10,000 plus 20 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from *Offers* A and B is lower than the evaluated price of *Offer* C. Award the combination of *Offers* A and B. Note that if *Offer* C had not specified all-or-none award, award would be made on *Offer* C for *line items* 3 and 4, totaling an award of $32,000.

(b) *Example 2*.

OFFERS

Item	**A**			**B**			**C**		
1	DO	=	$50,000	EL	=	$50,500	NEL	=	$50,000
2	NEL	=	$10,300	NEL	=	$10,000	EL	=	$10,200

OFFERS

Item	**A**			**B**			**C**		
3	EL	=	$20,400	EL	=	$21,000	NEL	=	$20,200
4	DO	=	$10,500	DO	=	$10,300	DO	=	$10,400
TOTAL	$91,200			$91,800			$90,800		

Problem: The *solicitation* specifies award on a group basis. Assume the Buy American statute applies and the *acquisition* cannot be set aside for *small business concerns*. All *offerors* are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the *offers* are domestic (see 25.503(c)(1)):

	Domestic [percent]	Determination
A	$50,000 (*Offer* A1) + $10,500 (*Offer* A4) = $60,500 $60,500/$91,200 (*Offer* A Total) = 66.3%	Domestic
B	$10,300 (*Offer* B4) /$91,800 (*Offer* B Total) $ = 11.2%	Foreign
C	$10,400 (*Offer* C4) /$90,800 (*Offer* C Total) = 11.5%	Foreign

STEP 2: Determine whether *foreign offers* are eligible or *noneligible offers* (see 25.503(c)(2)):

	Domestic + Eligible [percent]	Determination
A	N/A (Both Domestic)	Domestic
B	$50,500 (*Offer* B1) + $21,000 (*Offer* B3) + $10,300 (*Offer* B4)= $81,800. $81,800 /$91,800 (*Offer* B Total) = 89.1%	Eligible
C	$10,200 (*Offer* C2) + $10,400 (*Offer* C4) = $20,600. $20,600/$90,800 (*Offer* C Total) = 22.7%	Noneligible

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low *offer* (*Offer* C) is a *foreign offer*. There is no *eligible offer* lower than the *domestic offer*. Therefore, apply the

factor to the low *offer*. Addition of the 20 percent factor (use 30 percent if *Offer* A is a small business) to *Offer* C yields an evaluated price of $108,960 ($90,800 + 20 percent). Award on *Offer* A (see 25.502(c)(4)(ii)). Note that, if *Offer* A were greater than *Offer* B, an evaluation factor would not be applied, and award would be on *Offer* C (see 25.502(c)(3)).